

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/11
Date: 29 October 2014

TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Cuno Tarfusser
Judge Olga Herrera Carbuca

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO***

Public redacted version

**Decision on the urgent request of the Defence for Mr Gbagbo to attend his
mother's funeral**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Eric MacDonald

Counsel for Laurent Gbagbo

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

States' Representatives

Competent authorities of the Kingdom of
the Netherlands and the Republic of Côte
d'Ivoire

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Mr Patrick Craig

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Others

Trial Chamber I ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Laurent Gbagbo*, having regard to Articles 64, 68(1), 86 and 87 of the Rome Statute ('Statute'), Rule 176(2) of the Rules of Procedure and Evidence ('Rules') and Regulation 28 of the Regulations of the Court, issues the following 'Decision on the urgent request of the Defence for Mr Gbagbo to attend his mother's funeral'.

I. Procedural history

1. On 23 November 2011, Pre-Trial Chamber III issued an arrest warrant for Laurent Gbagbo ('Mr Gbagbo' or 'the Accused').¹
2. On 30 November 2011, Mr Gbagbo was surrendered to the seat of the Court.² He has since been detained at the Court's detention centre.³
3. On 21 October 2014, the Defence team for Mr Gbagbo ('Defence') filed a *'Requête urgente, fondée sur des circonstances humanitaires exceptionnelles, déposée afin que le Président Gbagbo soit autorisé à se recueillir devant la dépouille de sa*

¹ Warrant Of Arrest For Laurent Koudou Gbagbo, 23 November 2011, ICC-02/11-01/11-1.

² Corrigendum to the Order scheduling the first appearance of Mr Laurent Koudou Gbagbo for 5 December 2011 and authorizing photographs to be taken at that hearing, 1 December 2011, ICC-02/11-01/11-10-Corr, para. 2.

³ Pre-Trial Chamber I has ruled on numerous occasions on Mr Gbagbo's applications for interim release, deciding that he must remain in detention (*See* Decision on the "Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo, 13 July 2012, ICC-02/11-01/11-180-Conf; Decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute, 12 November 2012, ICC-02/11-01/11-291; Decision on the request for the conditional release of Laurent Gbagbo and on his medical treatment, 18 January 2013, ICC-02/11-01/11-362-Conf (public redacted version at ICC-02/11-01/11-362-Red); Second decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute, 12 March 2013, ICC-02/11-01/11-417-Conf (public redacted version at ICC-02/11-01/11-417-Red); Third decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute, 11 July 2013, ICC-02/11-01/11-454; Fourth decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute, 11 November 2013, ICC-02/11-01/11-558; Fifth decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute, 12 March 2014, ICC-02/11-01/11-633; Sixth decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute, 11 July 2014, ICC-02/11-01/11-668). *See also*, Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I of 13 July 2012 entitled "Decision on the 'Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo'", 26 October 2012, ICC-02/11-01/11-278-Conf (public redacted version at ICC-02/11-01/11-278-Red); Judgment on the appeal of Mr Laurent Gbagbo against the decision of Pre-Trial Chamber I of 11 July 2013 entitled "Third decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute", 29 October 2013, ICC-02/11-01/11-548-Conf (public redacted version at ICC-02/11-01/11-548-Red).

mère et à assister à son enterrement ('Defence Request'),⁴ in which it, *inter alia*, requests Mr Gbagbo's release for a period of time not shorter than three days, subject to a number of conditions and guarantees, in order to organise and attend his mother's funeral.

4. On 22 October 2014, the Defence filed a public redacted version of the Defence Request.⁵ Pursuant to Regulation 23*bis* of the Regulations, the Chamber instructed the Registry to urgently reclassify the filing as 'confidential'.⁶
5. On 22 October 2014, the Chamber filed an 'Order reducing the time limit to file a response',⁷ in which it ordered the Prosecution and the Legal Representative of victims to file their responses to the Defence Request, if any, by 24 October 2014, and instructed the Registry to file observations by the same date.
6. On 23 October 2014, the Chamber instructed the Registry to provide the Defence request to the relevant authorities of the Kingdom of the Netherlands ('the Netherlands') and of the Republic of Côte d'Ivoire ('Côte d'Ivoire'), and invited the relevant State authorities to submit observations on the Defence Request as soon as possible.⁸
7. On 24 October 2014, the Prosecution⁹ and the Legal Representative of victims¹⁰ filed their responses. On the same date, the Registry filed its

⁴ Defence, *Requête urgente, fondée sur des circonstances humanitaires exceptionnelles, déposée afin que le Président Gbagbo soit autorisé à se recueillir devant la dépouille de sa mère et à assister à son enterrement*, 21 October 2014, ICC-02/11-01/11-697-Conf and confidential annex.

⁵ Defence, *Requête urgente, fondée sur des circonstances humanitaires exceptionnelles, déposée afin que le Président Gbagbo soit autorisé à se recueillir devant la dépouille de sa mère et à assister à son enterrement*, 22 October 2014, ICC-02/11-01/11-697-Red and confidential annex.

⁶ Email communications from Legal Officer of the Trial Chamber to the Registry on 22 October 2014 at 10.28 and 11.30.

⁷ Order reducing the time limit to file a response, 22 October 2014, ICC-02/11-01/11-698-Conf.

⁸ Email communication from Legal Office of the Trial Chamber to the Registry on 23 October 2014 at 13.21.

⁹ Prosecution's Response to Defence's « *Requête urgente, fondée sur des circonstances humanitaires exceptionnelles, déposée afin que le Président Gbagbo soit autorisé à se recueillir devant la dépouille de sa mère et à assister à son enterrement* », 24 October 2014, ICC-02/11-01/11-703-Conf ('Prosecution Response').

submissions,¹¹ to which it annexed: (i) a security assessment;¹² (ii) the submissions of the Netherlands;¹³ and (iii) the submissions of Côte d'Ivoire.¹⁴

8. On 29 October 2014, the Defence requested authorisation to reply to Côte d'Ivoire's submissions ('Defence Reply Request').¹⁵ The Defence argues that Côte d'Ivoire's submissions are insufficient and wishes to reply on the feasibility of the transfer requested.¹⁶

II. Submissions

A. Defence Request

9. The Defence seeks authorisation for Mr Gbagbo to travel to Côte d'Ivoire in order to organise and to attend his mother's funeral. The Defence informs the Chamber that the funeral and burial ceremonies, in the Bété culture, take numerous weeks.¹⁷ In these circumstances and taking into account the personal circumstances of the Accused, the Defence considers that the length of stay should not be less than three or four days.¹⁸ Explaining the importance of Mr Gbagbo's involvement as the eldest son of the family,¹⁹ the Defence indicates that Mr Gbagbo would prefer attending his mother's

¹⁰ Response of the Common Legal Representative of victims to the "*Requête urgente, fondée sur des circonstances humanitaires exceptionnelles, déposée afin que le Président Gbagbo soit autorisé à se recueillir devant la dépouille de sa mère et à assister à son enterrement*", 24 October 2014, ICC-02/11-01/11-702-Conf ('LRV Response').

¹¹ Registry submission pursuant to "Order reducing the time limit to file a response", 24 October 2014, ICC-02/11-01/11-704-Conf ('Registry Submissions').

¹² Annex 1 to Registry submission pursuant to "Order reducing the time limit to file a response", 24 October 2014, ICC-02/11-01/11-704-Conf-Exp-Anx1 ('Security Assessment').

¹³ Annex 2 to Registry submission pursuant to "Order reducing the time limit to file a response", 24 October 2014, ICC-02/11-01/11-704-Conf-Anx2 ('Observations of the Netherlands').

¹⁴ Annex 3 to Registry submission pursuant to "Order reducing the time limit to file a response", 24 October 2014, ICC-02/11-01/11-704-Conf-Anx3 ('Observations of Côte d'Ivoire').

¹⁵ Demande d'autorisation aux fins de pouvoir répliquer aux « observations de la République de la Côte d'Ivoire sur la requête urgente, fondée sur des circonstances humanitaires exceptionnelles, déposée afin que le Président Gbagbo soit autorisé à se recueillir devant la dépouille de sa mère et à assister à son enterrement » (ICC-02/11-01/11-704-Conf-Anx3), 29 October 2014, ICC-02/11-01/11-710-Conf.

¹⁶ Defence Reply Request, ICC-02/11-01/11-710-Conf, paras 14, 16, 20-25.

¹⁷ Defence Request, ICC-02/11-01/11-697-Conf, para. 30.

¹⁸ Defence Request, ICC-02/11-01/11-697-Conf, paras 34 and 40.

¹⁹ Defence Request, ICC-02/11-01/11-697-Conf, paras 12-23.

burial but that, if it is considered problematic by the Chamber, he would make do with a very short stay during which he could organise the funeral and the burial without attending the ceremonies.²⁰

10. The Defence recognises that the statutory provisions on interim release do not explicitly provide for short periods of release due to exceptional circumstances. However, it submits that, under Article 64 of the Statute and following the jurisprudence of the Court in the case *The Prosecutor v. Jean-Pierre Bemba Gombo*, a Chamber can exercise its 'inherent power' in exceptional humanitarian circumstances to order the transfer of a detained person to another country.²¹ The Defence considers that the death of Mr Gbagbo's mother constitutes an exceptional humanitarian circumstance justifying his authorised transfer to Côte d'Ivoire in order to organise the funeral and attend the burial.²²
11. The Defence further submits that, pursuant to Articles 86 and 87 of the Statute, the Chamber has the power to require a State Party's cooperation to enable the transfer and the stay of a detained person on its territory.²³
12. Finally, the Defence considers that the Chamber has the discretion to impose conditions, including any conditions restricting liberty listed at Rule 119 of the Rules, as necessary for the smooth transfer of the detained person.²⁴ It indicates that Mr Gbagbo is willing to comply with all safety measures to be imposed by the Chamber²⁵ and further provides a list of conditions and guarantees that Mr Gbagbo specifically indicated he would adhere to.²⁶

²⁰ Defence Request, ICC-02/11-01/11-697-Conf, paras 31-32.

²¹ Defence Request, ICC-02/11-01/11-697-Conf, paras 5-6. *See also*, paras 9-10.

²² Defence Request, ICC-02/11-01/11-697-Conf, para. 25.

²³ Defence Request, ICC-02/11-01/11-697-Conf, para. 8.

²⁴ Defence Request, ICC-02/11-01/11-697-Conf, para. 7.

²⁵ Defence Request, ICC-02/11-01/11-697-Conf, paras 33 and 40.

²⁶ Defence Request, ICC-02/11-01/11-697-Conf, paras 38-40.

B. The Prosecution

13. The Prosecution submits that based on a combination of legal, security and logistical reasons, the Chamber should decline to exercise its discretion to release Mr Gbagbo to attend his mother's funeral and, accordingly, to reject the Defence Request.²⁷
14. The Prosecution first stresses that the Defence relied on precedents which are inapposite and that a number of factors distinguish the present situation from the circumstances surrounding previous requests granted. In its view, these particularities include: (i) the travel destination is the very country in which Mr Gbagbo is alleged to have committed the crimes for which he has been charged; (ii) the potential scale of the events Mr Gbagbo wishes to attend; (iii) the duration of the travel requested; (iv) the unavailability of air transportation; and (v) the cost involved in the endeavour and the means available to the Accused to pay himself for all costs incurred by the request.²⁸
15. Second, the Prosecution identifies numerous security concerns and potential risks, including regarding Mr Gbagbo's own security.²⁹ Moreover, in its view, Mr Gbagbo's mere presence in Côte d'Ivoire would likely increase the risk of public mass gatherings, turmoil and violence in Côte d'Ivoire.³⁰
16. Finally, the Prosecution adds that, if the Chamber grants the Defence Request, it should order very strict conditions, including, at a minimum, those listed in its response.³¹

²⁷ Prosecution Response, ICC-02/11-01/11-703-Conf, paras 1 and 26.

²⁸ Prosecution Response, ICC-02/11-01/11-703-Conf, para. 9.

²⁹ Prosecution Response, ICC-02/11-01/11-703-Conf, paras 11-18.

³⁰ Prosecution Response, ICC-02/11-01/11-703-Conf, para. 14.

³¹ Prosecution Response, ICC-02/11-01/11-703-Conf, paras 25-26.

C. *The Legal Representative of victims*

17. The Legal Representative of victims acknowledges the humanitarian reasons behind the Defence Request.³² Nevertheless, in light of security concerns, it submits that ‘the presence of Mr Gbagbo on the territory of Côte d’Ivoire would have a substantial impact on the precarious security situation of the victims and would not ensure the full respect of their right to safety and well-being under [A]rticle 68(1) of the Rome Statute’.³³ The Legal Representative warns the Chamber that ‘the very news of Mr. Gbagbo’s return to Côte d’Ivoire will *per se* cause severe distress among the victims and may as such intimidate witnesses’.³⁴
18. Accordingly, the Legal Representative of victims contends that the Defence request should be rejected.³⁵

D. *The Registry*

19. The Registry submits that, from a technical and logistical point of view, it is in a position to liaise with Côte d’Ivoire to prepare the transfer of Mr Gbagbo. [REDACTED].³⁶
20. In its security assessment, the Registry [REDACTED].³⁷
21. [REDACTED],³⁸ [REDACTED].³⁹ [REDACTED].⁴⁰

E. *The Netherlands*

22. [REDACTED].⁴¹ [REDACTED].

³² LRV Response, ICC-02/11-01/11-702-Conf, para. 7.

³³ LRV Response, ICC-02/11-01/11-702-Conf, paras 13-15.

³⁴ LRV Response, ICC-02/11-01/11-702-Conf, para. 21.

³⁵ LRV Response, ICC-02/11-01/11-702-Conf, para. 15.

³⁶ Registry Submissions, ICC-02/11-01/11-704-Conf, para. 2.

³⁷ Security Assessment, ICC-02/11-01/11-704-Conf-Exp-Anx1, pages 1-2.

³⁸ Security Assessment, ICC-02/11-01/11-704-Conf-Exp-Anx1, page 2.

³⁹ Security Assessment, ICC-02/11-01/11-704-Conf-Exp-Anx1, page 4.

⁴⁰ Security Assessment, ICC-02/11-01/11-704-Conf-Exp-Anx1, page 4.

F. Côte d'Ivoire

23. [REDACTED].⁴² [REDACTED].⁴³

III. Analysis

24. As regards the Defence Reply Request, the Chamber appreciates why the Defence seeks to make the additional contemplated submissions, but considers that, in light of all submissions received, the feasibility of Mr Gbagbo's transfer has been sufficiently addressed. The Chamber is not persuaded that additional submissions by the Defence would materially assist the Chamber's determination, and rejects the Defence Reply Request.

25. Turning to the merits of the Defence Request, the Chamber considers that an accused may be transferred out of the detention centre when compelling humanitarian circumstances justify such a transfer. Similar transfers have been authorised previously by other Chambers of this Court⁴⁴ and, for example, at the International Criminal Tribunal for the Former Yugoslavia.⁴⁵ However, as is the case in the conditional release jurisprudence, in order to

⁴¹ Observations of the Netherlands, ICC-02/11-01/11-704-Conf-Anx2, page 4.

⁴² Observations of Côte d'Ivoire, ICC-02/11-01/11-704-Conf-Anx3, para. 13 and page 6.

⁴³ Observations of Côte d'Ivoire, ICC-02/11-01/11-704-Conf-Anx3, para. 14 and page 6.

⁴⁴ Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, PUBLIC REDACTED VERSION OF ICC-01/05-01/08-1099-Conf Decision on the Defence Request for Mr Jean-Pierre Bemba to attend his Stepmother's Funeral, 12 January 2011, ICC-01/05-01/08-1099-Red; Pre-Trial Chamber II, *The Prosecutor v. Jean-Pierre Bemba Gombo*, PUBLIC REDACTED VERSION OF ICC-01/05-01/08-437-Conf Decision on the Defence's Urgent Request concerning Mr Jean-Pierre Bemba's Attendance of his Father's Funeral, 3 July 2009, ICC-01/05-01/08-437-Red (public redacted version notified 22 September 2009).

⁴⁵ Rule 65(B) of the ICTY Rules of Procedure and Evidence was amended on 20 October 2011 to include 'the existence of sufficiently compelling humanitarian grounds' as a consideration in deciding whether or not to granting provisional release. Prior to this, provisional release on such grounds was still granted to accused persons in a number of instances based on an exercise of the Chamber's discretion, in consideration of the relevant personal circumstances – *see for example*, ICTY, Trial Chamber II, *The Prosecutor v Popović et al*, Decision on Pandurević's Request for Provisional Release on Humanitarian Grounds, 11 December 2007, IT-05-88-T, para.11; ICTY, Trial Chamber III, *The Prosecutor v Prlić*, Decision on the Motion for Provisional Release of the Accused *Prlić*, 19 February 2008, IT-04-74-T.

grant such a transfer, a Chamber must impose specific conditions and a State willing and able to enforce those conditions must be identified.⁴⁶

26. The Chamber does consider Mr Gbagbo's request to be transferred to Côte d'Ivoire to organise his mother's funeral to constitute humanitarian circumstances. However, [REDACTED]. [REDACTED].

27. [REDACTED], the Chamber is not persuaded in the circumstances that any set of specific conditions can sufficiently mitigate the security and logistical concerns identified by Côte d'Ivoire, the Registry, the Prosecution and the Legal Representative of victims. The Chamber cannot justify granting the relief sought when doing so runs such a risk of endangering the populace in Côte d'Ivoire, Court staff and Mr Gbagbo himself.

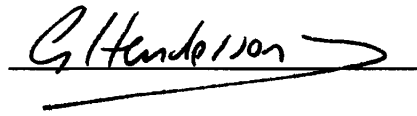
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Defence Reply Request; and

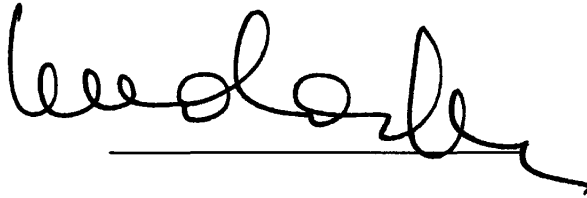
REJECTS the Defence Request.

⁴⁶ See Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 27 June 2011 entitled "Decision on Applications for Provisional Release", 12 September 2011, ICC-01/05-01/08-1626-Red, OA 7, para. 54; Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment on the appeal of the Prosecutor against Pre-Trial Chamber II's "Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa", 7 December 2009, ICC-01/05-01/08-631-Red, OA 2, paras 105-06.

Done in both English and French, the English version being authoritative.

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Judge Geoffrey Henderson, Presiding Judge

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Judge Cuno Tarfusser

A handwritten signature in black ink, appearing to read "Olga Herrera Carbuca", written over a horizontal line.

Judge Olga Herrera Carbuca

Dated 29 October 2014

At The Hague, The Netherlands